

Ross vs. Philip Morris, Inc.

The defense opened its case Monday, July 2, calling Dr. Louis H. Clerf, retired head of the Department of Otolaryngology and Bronchology at Jefferson Medical College, Philadelphia, in which post he was Dr. Chevalier Jackson's successor.

Dr. Clerf testified that the pyriform fossae are part of the alimentary tract rather than of the respiratory tract, and that these sinuses are closed or obliterated except during the act of swallowing. He discussed the anatomy of the areas involved, using two photo enlargements of the surgical specimen removed from plaintiff John Ross.

Dr. Clerf said he would not consider smoking or air pollutants as suspects in pyriform fossa cancer. In the case of Ross's cancer, he said he did not believe "smoking could be considered as a suspect, much less as a cause."

In cross-examination, plaintiff's counsel Field used a large color chart of the anatomy of the neck in an attempt to establish that the pyriform fossa could be reached by smoke. If so, Dr. Clerf replied, only part of the smoke would touch the sinuses, and then only the upper part of them. (Ross's cancer was at the bottom of the sinus.) Dr. Clerf also agreed that "tars" dissolved by saliva would pass through the fossae during swallowing. He refused to define cancer of the interior wall of the pyriform fossa as cancer of the exterior wall of the larynx. Field asked Dr. Clerf to concede that carcinogens had been found in tobacco smoke condensates, but Dr. Clerf said this was true only for mice.

Field then read a number of quotations from the literature implicating smoking in lung, larynx and oral cancers, including one from the textbook by Jackson and Jackson. All of these quotations had been read to the jury earlier. Dr. Clerf did not agree with the opinions they expressed, and said the elder Chevalier Jackson had been something of a fanatic on the subjects of tobacco and alcohol. Field asked Dr. Clerf whether he knew he was in minority of medical opinion on the subject of smoking and lung cancer. Dr. Clerf denied this.

(Defense counsel Hardy regularly objects to questions dealing with cancer of the lung, or any other forms of cancer except cancer of the pyriform fossa, on the ground that such questions are irrelevant and prejudicial. Judge Gibson usually rules that such questions are not substantive, but can be asked to test the qualifications of expert witnesses.)

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Field recited 15 errors of fact, mostly wrong dates, in Ross's testimony, and asked Dr. Clerf whether each one individually could have had any bearing on whether or not Ross developed his cancer. Dr. Clerf said each had no bearing as an isolated fact. In redirect, Hardy combined these errors with more of Ross's personal history in a hypothetical question and asked if these errors could have any such bearing when taken as a whole. Dr. Clerf replied that the history suggested emotional instability, a constitutional factor which had to be considered a suspect in cancer causation.

Dr. Clerf said he did not purport to be an expert of cancer causation, but that on questions involving cancer in the otolaryngological area he felt that he was competent to testify.

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